IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7928 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAGHAVBHAI NANJIBHAI

Versus

ZAVERBHAI VASTABHAI

Appearance:

MR MB GANDHI for Petitioner

MRS. MANISHA LAVKUMAR AGP for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 13/10/2000

ORAL JUDGEMENT

#. The petitioner claims himself to be an agriculturist and according to him the purchase of land by him from respondent no.1 by registered sale deed dated 29-4-1982 did not contravene any provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act 1948 (for short `the Act'). Since the petitioner is an agriculturist and

he purchased the land for agricultural purposes from another agriculturist, no permission under Section 63 of the Act was required from the revenue authorities. The Mamlatdar, Dandhuka initiated suo motu proceedings under Section 84C of the Act for setting aside the registered transaction of sale on the ground that the petitioner, being a non-agriculturist and having no agricultural land within the prescribed pheriphery from the land sold, was incompetent to make the purchase. The Mamlatdar by the impugned order dated 19-12-1987 passed exparte set aside the sale. Aggrieved with the said order of the Mamlatdar, the petitioner went in appeal to the Deputy Collector, who also by the impugned order dated 7-2-1989 maintained the order of the Mamlatdar. The petitioner, unsuccessfully approached the Revenue Tribunal, which also by order dated 15-11-1990 maintained the orders of the lower revenue authorities. The petitioner then filed a review petition along with the revenue records showing ownership and possession of agricultural land in his own name to prima facie prove that he is an agriculturist. The Revenue Tribunal by order dated 7-6-1991 rejected the review petition holding that no new evidence or material can be taken on record in exercise of review powers.

#. Learned counsel Shri M.B. Gandhi appearing for the petitioner submits that the petitioner had produced revenue records to show that he was an agriculturist and was therefore not disqualified from purchasing the land from another agriculturist. The second ground urged is that the suo motu proceedings by the Mamlatdar under Section 84C were initiated after more than a period of five years in 1987 and they were, therefore, barred having not been taken up within a reasonable period. Reliance is placed on Mohamad Kavi Mohamad Amin V. Fatmabai Ibrahim (1997) 6 SCC 71.

#. The respondent no.2 State of Gujarat impleaded through Mamlatdar has been served and I have heard the Asst. Government Pleader Mrs. Manisha Lavkumar, although she has not received any formal instructions from the Government. Her reply is that no evidence of the petitioner, being an agriculturist, was produced before the revenue authorities at the appropriate stage and this Court, therefore, should remand the matter for a fresh enquiry.

#. After hearing learned counsel for the parties, in my opinion, no useful purpose will be served at this distance of time to remand the matter for a fresh enquiry. Along with this petition, revenue record has been produced to show that the petitioner possesses

agricultural land. It is true that this material evidence was not produced before the Mamlatdar where the petitioner was ex-parte and it was also not produced before the Revenue Tribunal. It was however, produced in the review petition. There is no reply submitted by the respondent authorities in this petition to controvert the fact about the petitioner's holding agricultural land as shown in the revenue records annexed to the petition before this Court. The petitioner has, prima facie, produced the document to show that he was not disqualified from purchasing the land.

#. The petitioner deserves to succeed on the ground that the action of the Mamlatdar in exercise of suo motu powers under Section 84C was initiated after an unreasonably long period of five years. In the case of Mohamad Kavi Mohamad Amin (supra), on which reliance has been placed by the learned counsel for the petitioner, the Supreme Court held that a period of nine months from the date of sale was an unreasonable delay. It has been held by the Supreme Court that although Section 84C of the Act does not prescribe any time limit for initiation of proceedings but where the statutory power is vested in an authority without prescribing any time limit, such power should be exercised within a reasonable time. Reference was made to the earlier decisions of Supreme Court in Spe. W.A.No. 2770 of 1979 in the case of State of Gujarat Vs. Jethmal Bhagwandas Shah (unreported), State of Gujarat vs. Patil Raghav Natha reported in (1969) 2 SCC 187 and Ram Chand v. Union of India (1994) 1 SCC 44.

As a result of the discussion aforesaid, the petition deserves to succeed and is hereby allowed. The impugned orders of Mamlatdar dated 19.12.1987 in Tenancy Case No. 1295 of 1985, Deputy Collector dated 7.2.1989 in Appeal, Revenue Tribunal dated 15.11.1990 in Revision Application No. 349 of 1989 and Revenue Tribunal dated 7-6-91 in Review Application NO. 1 of 1991 are all quashed.

Rule is made absolute. There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

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